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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/082,774	02/25/2002	Gregory P. Fitzpatrick	BOC9-2001-0002 (238)	4419
40987	7590	09/05/2006	EXAMINER	
<b>AKERMAN SENTERFITT</b> P. O. BOX 3188 WEST PALM BEACH, FL 33402-3188				BRINEY III, WALTER F
		ART UNIT		PAPER NUMBER
				2615

DATE MAILED: 09/05/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/082,774	FITZPATRICK ET AL.
	Examiner	Art Unit
	Walter F. Briney III	2615

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 05 July 2006.  
 2a) This action is **FINAL**.                            2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-20 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1-20 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____.
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____.

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

1      **Claims 1, 2, 5-12 and 15-20 are rejected under 35 U.S.C. 102(e) as being anticipated by O'Neal et al. (US Patent 6,263,064).**

**Claim 1** is limited to “a method of message delivery.” This claim is currently amended by the applicant, however, as will be shown below the new limitations fail to distinguish the claim from the prior art.

First, the Non-Final Rejection filed 05 April 2006 is herein incorporated by reference. In said Rejection, the previous version of claim 1 was shown to be anticipated by O'Neal, yet, as currently amended, claim 1 requires that a receiving party establishes a plurality of reception states that are then stored as part of the method. O'Neal discloses that a plurality of options, i.e. “plurality of reception states,” are selected by a user of a unified message system. See Abstract, lines 1-4, and figure 6, especially steps 610 and 612.

Moreover, claim 1 as amended recites that “the specified conditions informing the sending party of a time at which and a communication channel through which the receiving party prefers to receive delivery of a message depending on at least one of

the nature of the message and the identity of the sending party.” On pages 10-12 of the current response, the applicant correctly notes that O’Neal fails to expressly disclose “informing the sending party of a time at which and a communication channel through which the receiving party prefers to receive delivery of a message.” For example, O’Brian does not send a message that says, “the user would prefer you to call his house at 6:00pm.” However, the receiving party of O’Brian will subjectively interpret the specified conditions of the plurality of reception states, and thus, infer “a time at which and a communication channel through which the receiving party prefers to receive delivery of a message.”

For example, if a sending party calls a receiving party normally, i.e. not a fax, that call is handled in accordance with communication options settings. See figure 5, steps 508 and 510. It is noted that the determination of whether the receiving party is leaving a fax or making a regular call corresponds to “the nature of the message.” If the nature of the message is a regular call and If the receiving party had set the call forward option—instead of, e.g., a page option—the sending party’s call will be forwarded, from which the sending party can infer, i.e. be “informed,” that the receiving party wishes to be contacted by phone as soon as possible. Clearly the sending party inherently makes this inference subjectively.

As the claim does not appear to specify how the sending party is “informed,” the above-discussed inherent inferences anticipate the limitation. Therefore, O’Neal anticipates all limitations of the claim.

**Claims 2, 5-10** are limited to “the method of claim 1,” as covered by O’Neal.

These claims are rejected for the reasons presented above regarding claim 1 in addition to the respective reasons presented in said Non-Final Rejection.

**Claims 11, 12 and 15-20** are limited to “a machine-readable storage” with a program that executes the methods of claims 1, 2 and 5-10, as covered by O’Neal. These claims are rejected for the reasons presented above regarding claim 1 in addition to the respective reasons presented in said Non-Final Rejection.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**2** **Claims 3, 4, 13 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over O’Neal in view of Adams et al. (US Patent 6,631,186).**

**Claims 3 and 4** are limited to “the method of claim 1,” as covered by O’Neal.

These claims are rejected for the reasons presented above regarding claim 1 in addition to the respective reasons presented in said Non-Final Rejection.

**Claims 13 and 14** are limited to “a machine-readable storage” with a program that executes the methods of claims 3 and 4, as covered by O’Neal. These claims are rejected for the reasons presented above regarding claim 1 in addition to the respective reasons presented in said Non-Final Rejection.

***Response to Arguments***

Applicant's arguments with respect to claims 1-20 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Walter F. Briney III whose telephone number is 571-272-7513. The examiner can normally be reached on M-F 8am - 4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sinh Tran can be reached on 571-272-7564. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



WFB

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SUPERVISORY PATENT EXAMINER